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Corporation and The Hershey Company

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN OF CALIFORNIA**

HUHTAMAKI FINANCE, B.V. a
Netherlands corporation; THE
HERSHEY COMPANY; HERSHEY
CHOCOLATE &
CONFECTIONERY
CORPORATION, a Delaware
corporation; and THE HERSHEY
COMPANY, a Delaware
corporation,

Plaintiffs,

vs.

KENNETH DEAN AFFOLTER, an
individual, d/b/a BEYOND BOMB,

Defendant.

CASE NO. C07-02514 RS

APPLICATION TO ENTER
DEFAULT JUDGMENT

Date: February 20, 2008

Time: 9:30 a.m.

Courtroom: Hon. Richard Seeborg

TO THE DEFENDANT:

PLEASE TAKE NOTICE that on February 20, 2008 at 10:00 a.m. or as
soon thereafter as the matter may be heard in the courtroom of the Hon. Richard
Seeborg located at 280 South First Street, Room 2112, San Jose, California 95113.

1 Plaintiffs Huhtamaki Fianance, B.V., Hershey Chocolate & Confectionery
2 Corporation and the Hershey Company and will present their application for a
3 default judgment against Defendant Kenneth Dean Affolter, d/b/a Beyond Bomb.
4 The Clerk previously issued the default of said Defendant on July 5, 2007.

5 At the time and place of hearing, Plaintiff will present proof of the following
6 matters:

7 1. Defendant Kenneth Dean Affolter is not an infant or incompetent person
8 or in the military service or otherwise exempted under the Soldiers' and Sailors'
9 Civil Relief Act of 1940; and

10 2. Said Defendant has not appeared in this action.

11 3. Notice of this Application for Default Judgment by Court was served on
12 said Defendant on January 11, 2008 by mail.

13 4. Plaintiffs are entitled to judgment against said Defendant on account of
14 claims pleaded in the Complaint, to wit: Trademark Infringement, False
15 Designation of Origin, Trademark Dilution and Tarnishment, Sales of Counterfeit
16 Items, Unfair Competition, Declaratory Judgment, Permanent Injunctive Relief,
17 Corrective Advertising Damages.

18 5. This action arises out of Defendant's use of the names STONEY
19 RANCHERS and RASTA REESE'S in a style and manner confusingly similar to
20 Plaintiff's JOLLY RANCHERS and REESES marks, utilizing imitations of
21 Plaintiff's trade dress, in connection with candies containing marijuana.

22 6. Defendant's goods, specifically candies containing marijuana, were
23 distributed by Defendant and purchased by Defendant's customers in the State of
24 California under the position and/or belief that California Proposition 215, the
25 Compassionate Use Act passed by California voters in 1996, legalized the sale of
26 marijuana to seriously ill Californians, provided they obtain a doctor's
27 recommendation. Defendant's infringing products are likely to be encountered by
28 some of the same purchasers and consumers of Plaintiff's products under

1 circumstances that are likely to give rise to the mistaken belief that the Plaintiffs'
2 infringing products and the Defendants' goods come from a common source or are
3 sponsored or endorsed by, or affiliated with, a single company, and, further, that
4 Plaintiffs have taken a stand, are supporters of, or play a roll in, the current public
5 policy debate relating to legalizing marijuana use for the ill.

6 7. The amount of judgment sought is in the sum of \$200,000 for
7 Defendant's infringement of each trademark as set forth in the attached Declaration
8 of Lois Duquette. Plaintiff also seeks a permanent injunction in the form lodged
9 herewith.

10 This Application is based on this Notice, the attached Declaration of Lois
11 Duquette, and the pleadings, files and other matters that may be presented at the
12 hearing.

13 Date: January 11, 2008

HOLLAND & KNIGHT LLP

14
15 By: 

Vito A. Costanzo

16 Attorneys for Plaintiffs Huhtamaki
17 Finance, B.V., Hershey Chocolate &
18 Confectionery Corporation and The
19 Hershey Company

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PROOF OF SERVICE

State of California)
) ss.
County of Los Angeles)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 633 West Fifth Street, 21st Floor, Los Angeles, California 90071.

On January 11, 2008, I served the document described as **APPLICATION TO ENTER DEFAULT JUDGMENT** on the interested parties in this action, enclosed in a sealed envelope, addressed as follows:

Kenneth Dean Affolter
#93480-111
FCI Lompoc
3600 Guard Road
Lompoc, CA 93436

☒ **(By Mail)** Following ordinary business practices, I placed the document for collection and mailing at the offices of Holland & Knight LLP, 633 West Fifth Street, 21st Floor, Los Angeles, California 90071, in a sealed envelope. I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service, and, in the ordinary course of business, such correspondence would be deposited with the United States Postal Service on the day on which it is collected at the business.

☐ **(BY UPS)** Following ordinary business practices, I placed the document for collection and UPS delivery at the offices of Holland & Knight LLP, 633 West Fifth Street, 21st Floor, Los Angeles, California 90071. I am readily familiar with the business' practice for collection and processing of correspondence for delivery by UPS, and, in the ordinary course of business, such correspondence would be deposited with UPS on the day on which it is collected at the business.

☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee stated on the attached service list.

Executed on January 11, 2008, Los Angeles, California

X I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Conchita Nickles